

EMPLOYMENT AGREEMENT
BY AND BETWEEN
THE MAYOR AND CITY COUNCIL OF BALTIMORE
AND
DARRYL DANNIEL DE SOUSA

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered in this 28 day of February, 2018, by and between DARRYL DANNIEL DE SOUSA ("Mr. De Sousa") and the Mayor and City Council of Baltimore, a municipal corporation of the State of Maryland ("Baltimore City"), and sets out the terms of Mr. De Sousa's employment as Police Commissioner for Baltimore City ("Commissioner"). As required by Section 16-5(a) of the Public Local Laws of Baltimore City, this Agreement is subject to the City Council's confirmation of Mr. De Sousa as Commissioner.

RECITALS

WHEREAS, the City desires to appoint Mr. De Sousa as Commissioner, consistent with Section 16-5 of the Public Local Laws of Baltimore City; and

WHEREAS, Mr. De Sousa desires to serve as the appointed Commissioner.

NOW THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the premises, terms and conditions contained herein, and other good and valuable consideration, the adequacy of which is acknowledged by the parties, it is agreed as follows:

I. EMPLOYMENT

The City agrees to employ Mr. De Sousa as the Commissioner. The parties specifically acknowledge the provisions of Section 16-5(a) of the Public Local Laws of Baltimore City, and assert and agree that Mr. De Sousa is qualified to serve as Commissioner.

II. DUTIES

A. During the term of his service as Commissioner, Mr. De Sousa shall have the authority to exercise the duties and responsibilities of the Commissioner as detailed in Subtitle 16 of the Public Local Laws of Baltimore City.

B. As Commissioner, in addition to performing all duties as set forth in Subtitle 16 of the Public Local Laws of Baltimore City, Mr. De Sousa shall report directly to the Mayor or the Mayor's designee. Mr. De Sousa shall be charged with the effective and impartial enforcement of all applicable laws and regulations of the City, the State of Maryland, and the United States for the protection of all citizens who live or work in the City or who visit the City.

C. As Commissioner, Mr. De Sousa's duties and responsibilities shall include planning, organizing, directing, staffing and coordinating police operations. Pursuant to Section 16-9 of the Public Local Laws of Baltimore City, the Commissioner shall be responsible for annual reporting of the operational performance of the Baltimore Police Department ("the Department").

D. Mr. De Sousa shall devote his entire professional time and effort to his service as Commissioner and shall not engage in any outside paid employment, except as may be approved and authorized in advance and in writing by the Mayor or her designee.

E. During the term of this Agreement, Mr. De Sousa shall have an annual comprehensive physical examination by a licensed physician approved by the Mayor or her designee. The City shall pay the cost of such examination. Any resulting medical information about Mr. De Sousa shall remain confidential and not be subject to disclosure, except as may be required by law. The City shall advise Mr. De Sousa in advance of any planned disclosure so as to afford Mr. De Sousa the opportunity to protect the confidential nature of any medical report.

Reports of the annual examinations shall be delivered only to the Mayor or her designee; such delivery shall not be deemed a waiver of the confidentiality of the report.

III. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The Mayor may fix any other terms and conditions of employment as she may from time to time determine to be desirable or necessary, relating to Mr. De Sousa's performance as Commissioner, provided such terms and conditions are not inconsistent with the terms and conditions of this Agreement and the requirements of Subtitle 16 of the Public Local Laws of Baltimore City.

IV. TERM

The term of this Agreement shall begin on the date of its approval by the Board of Estimates ("Effective Date") and shall continue through June 30, 2022.

V. COMPENSATION

A. Base Salary

Mr. De Sousa's base salary shall be two-hundred-ten-thousand dollars (\$210,000) per year, and shall increase, if at all, at the same annual percentage rate as received by entry-level members of the Department. Mr. De Sousa is not entitled to receive costs of living or other salary adjustments received by other department heads or other members of the Managerial and Professional Society ("MAPS"). The use of the term "B/benefits" in any other section of this Agreement specifically excludes salary adjustments and entitles Mr. De Sousa only to those benefits that will not result in an increase in salary.

B. No Compounding

Any annual percentage salary increase during the term of this Agreement shall be calculated on the original base salary as specified herein of two-hundred-ten-thousand dollars (\$210,000), and shall not be compounded during the term of his appointment.

C. Bi-weekly Payments

The City shall pay the base salary in equal bi-weekly installments, subject to such payroll and withholding deductions as may be required by law, and other deductions required by this Agreement.

D. Benefits

The City shall reimburse Mr. De Sousa for relocation costs and expenses to a Baltimore City address in an amount agreed to by the Mayor or her designee and approved by the Board of Estimates. Mr. De Sousa shall be entitled to receive all benefits and allowances available to other members of the Department's command staff. The City shall bear the full costs of any fidelity or other bonds required of Mr. De Sousa under any law or ordinance.

Mr. De Sousa shall also be eligible to participate or continue to participate in the Deferred Compensation Plan offered by the City. Nothing contained in this Agreement shall alter or amend in any way Mr. De Sousa's status in the Deferred Compensation Plan or the benefits he may be entitled to receive as a result of his participation in the Deferred Compensation Plan.

Further, Mr. De Sousa shall also be eligible to participate or continue to participate in Fire and Police pension programs (including but not limited to the Deferred Retirement Option Plan) offered by the City. Nothing in this Agreement shall alter or amend any

benefits Mr. De Sousa is entitled to receive as a result of his participation in the Fire and Police pension program.

VI. TERMINATION

A. Termination for Just Cause

Mr. De Sousa recognizes that he may be terminated for “just cause” by the Mayor, acting on behalf of the City, and nothing in this contract shall affect the rights of the City or of the Mayor in that respect. “Just Cause” for purposes of this section shall include the following:

- (1) Persistent and repetitive dereliction of duty on multiple occasions involving violations of multiple standards of behavior;
- (2) Chronic and excessive use of intoxicants affecting his ability to effectively perform the duties of his office, or conviction of an offense involving the illegal sale or possession of drugs, or conviction of an offense involving the operation of a motor vehicle under the influence of intoxicants;
- (3) Indictment for commission of a felony or other crime involving moral turpitude or theft; and
- (4) Mental or physical incapacitation.

If the City, through the Mayor, provides Mr. De Sousa with written notice that he is being terminated for “just cause” as above defined, his right to salary or compensation and his service shall end immediately upon delivery of such written notice. However, termination for “just cause” shall have no effect on Mr. De Sousa’s continued entitlement to vested benefits, including but not limited to Deferred Compensation Plan benefits, DROP benefits, and Fire and Police pension benefits.

B. Termination without Cause

The City may terminate this Agreement at any time without cause by giving at least forty-five (45) days written notice to Mr. De Sousa.

“Termination without cause” is defined as any basis for termination other than the bases specifically enumerated in Section VI-A of this Agreement as “just cause” termination bases.

If the City terminates this Agreement “without cause,” Mr. De Sousa shall be entitled to Severance Pay of one-hundred-fifty- thousand dollars (\$150,000) and he shall also be entitled to payout for all accrued leave and benefits allowed to be paid out at termination, except any compensatory time earned.

In the Mayor’s sole discretion, Mr. De Sousa can be separated from employment and removed from payroll earlier than forty-five (45) days and be paid a pro rata lump sum calculated by the days of salary he lost by being removed earlier than the full forty-five (45) days.

All such payments will be made within forty-five (45) days of separation.

VII. RESIGNATION

If Mr. De Sousa voluntarily resigns prior to the end of the term of this Agreement, he must give at least forty-five (45) days written notice and shall not be entitled to Severance Pay as detailed in Section VI-B, but shall receive accrued salary and benefits as provided for in Section VI-B.

VIII. PROFESSIONAL DEVELOPMENT

The City shall pay for dues, travel, subsistence expenses incurred by Mr. De Sousa and/or reimburse Mr. De Sousa for those expenses he first incurs for conferences, continuing education programs, law enforcement institutes and similar seminars which Mr. De Sousa deems are necessary for both his professional development and for the good of the Department and/or of the City.

The City encourages Mr. De Sousa's participation in professional organizations and civic organizations related to the job of Commissioner and will pay for such participation or reimburse Mr. De Sousa for expenses he first personally incurs.

The City encourages Mr. De Sousa's participation in and appearance at local events and will pay for and/or reimburse Mr. De Sousa for expenses associated with such appearances, it being the City's and Mr. De Sousa's belief that the Commissioner serves as an ambassador of the City at such functions.

IX. INDEMNIFICATION

The City shall defend, save, hold harmless and indemnify Mr. De Sousa against any and all civil claims, lawsuits, causes of action, demand or other civil legal actions brought against Mr. De Sousa in his official capacity as Commissioner of the City. The City shall pay the amount of any defense, settlement or judgment arising out of such claims or causes of action for conduct within the scope of Mr. De Sousa's duties as Commissioner.

The City will not be obligated to pay any punitive damages which arise from Mr. De Sousa's willful misconduct. While the City cannot agree to satisfy punitive damages awards without limitation or qualification, in the unlikely event that any claim against Mr. De Sousa survives a successful motion to dismiss or for summary disposition filed on behalf of Mr. De

Sousa and goes to a jury and the jury subsequently assesses punitive damages against Mr. De Sousa, the City's retained counsel will file appropriate post-trial motions seeking to overturn such damages and will exhaust the appropriate appeals within the Maryland court system or to the United States Court of Appeals for the Fourth Circuit at no expense to Mr. De Sousa. If such appeals are unsuccessful in reversing any award of punitive damages against Mr. De Sousa and the verdict becomes final, the City Solicitor will then make an independent evaluation of the evidence upon which the verdict was based and recommend to the Board of Estimates that the City pay the judgment if in the City Solicitor's opinion the evidence does not support or warrant punitive damages under the law of Maryland.

In the event that any criminal charge arising out of conduct within the scope of Mr. De Sousa's duties as Commissioner is filed in a Maryland court against Mr. De Sousa by a citizen without formal charge by law enforcement or other government authorities, such as and by way of example only, through indictment or warrant, the City shall provide Mr. De Sousa private counsel at no expense to him to assist in his defense. Nothing herein shall require the City to pay the costs of any criminal defense or any fines or penalties associated with any criminal action or proceeding which results in the conviction of Mr. De Sousa.

X. MERGER CLAUSE

This Agreement contains the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written.

XI. AMENDMENTS

This Agreement may be amended only by the mutual consent of all parties. Any amendment must be in writing and executed by all parties. Thereafter, the original Amendment shall be affixed to the original of this Agreement.

XII. WAIVER

Any waiver of any provision of this Agreement shall not be deemed to be a waiver of any other provision or of a subsequent breach, and shall not be construed to be a modification of the terms of this Agreement.

XIII. SEVERABILITY CLAUSE

If any provision or other portion of this Agreement is held unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, it shall be deemed severable and the validity of the remainder of the Agreement shall not be affected by the unconstitutional, invalid, or unenforceable provision or portion.

XIV. RESOLUTION OF DISPUTES

In the event of any dispute involving any provision of this Agreement or any dispute regarding Mr. De Sousa's employment with the City (with the exception of workers compensation, unemployment insurance or any other matter under the jurisdiction of the Labor Commissioner), including but not limited to claims of wrongful termination or failure to provide benefits, the parties agree to submit such dispute to the jurisdiction of the federal or state courts in Maryland. Venue for the adjudication of any controversy or claims arising out of or related to this Agreement shall be in the Circuit Court for Baltimore City or in the United States District Court for the District of Maryland. The parties agree that before judicial relief is sought, the Mayor and Mr. De Sousa shall meet face to face in an effort to resolve the dispute.

Alternatively, upon written agreement of both parties, at the time, the parties may submit any such dispute to binding arbitration pursuant to the laws of Maryland and the provisions below.

If the parties are unable to agree on the selection of a neutral arbitrator, the parties shall select a single arbitrator from the Maryland Mediation and Conciliation Service or the American Arbitration Association.

The non-prevailing party in any such arbitration (as determined by the arbitrator) shall bear all costs of the arbitrator and any related costs of arbitration.

XV. NOTICES

Notices relating to this Agreement shall be effective when hand-delivered to the following:

To City: Andre M. Davis, City Solicitor
101 City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

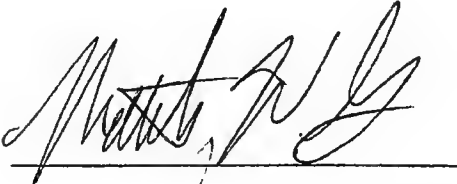
To Mr. De Sousa: Commissioner Darryl Danniel De Sousa
Baltimore Police Department
601 E. Fayette Street
Baltimore, Maryland 21202

XVI. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement of the parties respecting the matters set forth herein. No oral agreement, representation or agreement, not expressed herein in writing shall be binding upon or inure to the benefit of the parties or their heirs at law or the personal representative of Mr. De Sousa.

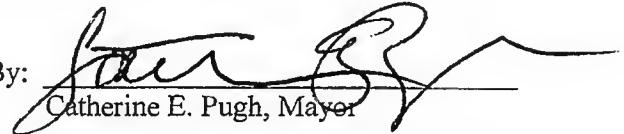
IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the day
and year first above written.

ATTEST:

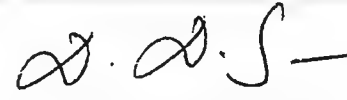
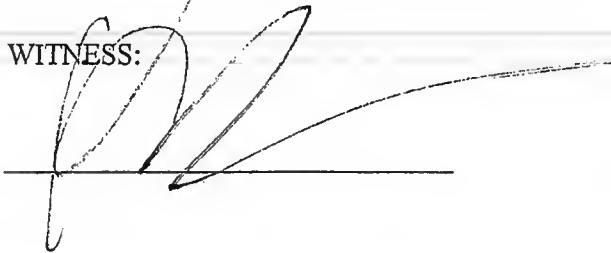


MAYOR AND CITY COUNCIL OF
BALTIMORE


By:


Catherine E. Pugh, Mayor

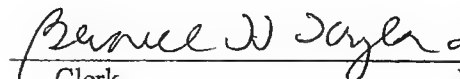
WITNESS:


(SEAL)
Darryl Danniell De Sousa

Approved as for Form and Legal
Sufficiency


City Solicitor

Approved by the Board of Estimates:


Clerk
2/28/18
Date

Being an 11 page Agreement by and between the Mayor and City Council of Baltimore and
Darryl Danniell De Sousa.

